

behavior it actually allows in practice. As long as the accountability gap exists, there will be little incentive for military command to correct bad behavior, or for civilian leadership to adopt policies that follow the law. As long as that gap exists, the problem of torture and abuse will remain.

This report examines how cases of deaths in custody have been handled. It is about how and why this "accountability gap" between U.S. policy and practice has come to exist. And it is about why ensuring that officials up and down the chain of command bear responsibility for detainee mistreatment should be a top priority for the United States.

#### THE CASES TO DATE

The cases behind these numbers have names and faces. This report describes more than 20 cases in detail, to illustrate both the failures in investigation and in accountability. Among the cases is that of Manadel al-Jamadi, whose death became public during the Abu Ghraib prisoner-abuse scandal when photographs depicting prison guards giving the thumbs-up over his body were released; to date, no U.S. military or intelligence official has been punished criminally in connection with Jamadi's death.

The cases also include that of Abed Hamed Mowhoush, a former Iraqi general beaten over days by U.S. Army, CIA and other non-military forces, stuffed into a sleeping bag, wrapped with electrical cord, and suffocated to death. In the recently concluded trial of a low-level military officer charged in Mowhoush's death, the officer received a written reprimand, a fine, and 60 days with his movements limited to his work, home, and church.

And they include cases like that of Nagem Sadoon Hatab, in which investigative failures have made accountability impossible. Hatab, a 52-year-old Iraqi, was killed while in U.S. custody at a holding camp close to Nasiriyah. Although a U.S. Army medical examiner found that Hatab had died of strangulation, the evidence that would have been required to secure accountability for his death—Hatab's body—was rendered unusable in court. Hatab's internal organs were left exposed on an airport tarmac for hours; in the blistering Baghdad heat, the organs were destroyed; the throat bone that would have supported the Army medical examiner's findings of strangulation was never found.

Although policing crimes in wartime is always challenging, government investigations into deaths in custody since 2002 have been unacceptable. The cases discussed in this report include incidents where deaths went unreported, witnesses were never interviewed, evidence was lost or mishandled, and record-keeping was scattershot. They also include investigations that were cut short as a result of decisions by commanders—who are given the authority to decide whether and to what extent to pursue an investigation—to rely on incomplete inquiries, or to discharge a suspect before an investigation can be completed. Given the extent of the non-reporting, under-reporting, and lax record keeping to date, it is likely that the statistics reported here, if anything, under-count the number of deaths.

#### Among our key findings:

Commanders have failed to report deaths of detainees in the custody of their command, reported the deaths only after a period of days and sometimes weeks, or actively interfered in efforts to pursue investigations;

Investigators have failed to interview key witnesses, collect useable evidence, or maintain evidence that could be used for any subsequent prosecution;

Record keeping has been inadequate, further undermining chances for effective investigation or appropriate prosecution;

Overlapping criminal and administrative investigations have compromised chances for accountability;

Overbroad classification of information and other investigation restrictions have left CIA and Special Forces essentially immune from accountability;

Agencies have failed to disclose critical information, including the cause or circumstance of death, in close to half the cases examined;

Effective punishment has been too little and too late.

#### CLOSING THE ACCOUNTABILITY GAP

The military has taken some steps toward correcting the failings identified here. Under public pressure following the release of the Abu Ghraib photographs in 2004, the Army reopened over a dozen investigations into deaths in custody and conducted multiple investigation reviews; many of these identified serious flaws. The Defense Department also "clarified" some existing rules, reminding commanders that they were required to report "immediately" the death of a detainee to service criminal investigators, and barring release of a body without written authorization from the relevant investigation agency or the Armed Forces Medical Examiner. It also made the performance of an autopsy the norm, with exceptions made only by the Armed Forces Medical Examiner. And the Defense Department says that it is now providing pre-deployment training on the Geneva Conventions and rules of engagement to all new units to be stationed in Iraq and responsible for guarding and processing detainees.

But these reforms are only first steps. They have not addressed systemic flaws in the investigation of detainee deaths, or in the prosecution and punishment of those responsible for wrongdoing. Most important, they have not addressed the role of those leaders who have emerged as a pivotal part of the problem—military and civilian command. Commanders are the only line between troops in the field who need clear, usable rules, and policy-makers who have provided broad instructions since 2002 that have been at worst unlawful and at best unclear. Under today's military justice system, commanders also have broad discretion to insist that investigations into wrongdoing be pursued, and that charges, when appropriate, be brought. And commanders have a historic, legal, and ethical duty to take responsibility for the acts of their subordinates. As the U.S. Supreme Court has recognized since World War II, commanders are responsible for the acts of their subordinates if they knew or should have known unlawful activity was underway, and yet did nothing to correct or stop it. That doctrine of command responsibility has yet to be invoked in a single prosecution arising out of the "war on terror."

Closing this accountability gap will require, at a minimum, a zero-tolerance approach to commanders who fail to take steps to provide clear guidance, and who allow unlawful conduct to persist on their watch. Zero tolerance includes at least this:

First, the President, as Commander-in-Chief, should move immediately to fully implement the ban on cruel, inhuman and degrading treatment passed overwhelmingly by the U.S. Congress and signed into law on December 30, 2005. Full implementation requires that the President clarify his commitment to abide by the ban (which was called into question by the President's statement signing the bill into law). It also requires the President to instruct all relevant military and intelligence agencies involved in detention and interrogation operations to review and revise internal rules and legal guidance

to make sure they are in line with the statutory mandate.

Second, the President, the U.S. military, and relevant intelligence agencies should take immediate steps to make clear that all acts of torture and abuse are taken seriously—not from the moment a crime becomes public, but from the moment the United States sends troops and agents into the field. The President should issue regular reminders to command that abuse will not be tolerated, and commanders should regularly give troops the same, serious message. Relevant agencies should welcome independent oversight—by Congress and the American people—by establishing a centralized, up-to-date, and publicly available collection of information about the status of investigations and prosecutions in torture and abuse cases (including trial transcripts, documents, and evidence presented), and all incidents of abuse. And the Defense and Justice Departments should move forward promptly with long-pending actions against those involved in cases of wrongful detainee death or abuse.

Third, the U.S. military should make good on the obligation of command responsibility by developing, in consultation with congressional, military justice, human rights, and other advisors, a public plan for holding all those who engage in wrongdoing accountable. Such a plan might include the implementation of a single, high-level convening authority across the service branches for allegations of detainee torture and abuse. Such a convening authority would review and make decisions about whom to hold responsible; bring uniformity, certainty, and more independent oversight to the process of discipline and punishment; and make punishing commanders themselves more likely.

Finally, Congress should at long last establish an independent, bipartisan commission to review the scope of U.S. detention and interrogation operations worldwide in the "war on terror." Such a commission could investigate and identify the systemic causes of failures that lead to torture, abuse, and wrongful death, and chart a detailed and specific path going forward to make sure those mistakes never happen again. The proposal for a commission has been endorsed by a wide range of distinguished Americans from Republican and Democratic members of Congress to former presidents to leaders in the U.S. military. We urge Congress to act without further delay.

This report underscores what a growing number of Americans have come to understand. As a distinguished group of retired generals and admirals put it in a September 2004 letter to the President: "Understanding what has gone wrong and what can be done to avoid systemic failure in the future is essential not only to ensure that those who may be responsible are held accountable for any wrongdoing, but also to ensure that the effectiveness of the U.S. military and intelligence operations is not compromised by an atmosphere of permissiveness, ambiguity, or confusion. This is fundamentally a command responsibility." It is the responsibility of American leadership.

#### TRIBUTE TO SAMANTHA FANG

#### HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 25, 2006

Ms. ZOE LOFGREN of California. Mr. Speaker, I rise today to recognize Samantha Fang for her selection as a Presidential Scholar in the Arts for 2006, our Nation's highest honor for graduating high school artists.

Samantha was selected as one of the 20 Presidential Scholars in the Arts this year for her success and accomplishments as a classical pianist. She was selected for this honor by virtue of being a national Finalist in the NFAA Arts Recognition and Talent Search (ARTS) program, a program in which 6,524 high school students applied to in 2006. Samantha and her fellow Presidential Scholars in the performing arts will be featured in a showcase performance during the Salute to the Presidential Scholars at the John F. Kennedy Center for the Performing Arts.

Samantha, who will graduate as valedictorian of The Harker School in Sunnyvale this June, began her piano studies at the age of 5. Currently, she is enrolled in the Preparatory Division at the San Francisco Conservatory of Music, where she was named an "Honorary Distinction" student, the highest award presented by the Preparatory Division. Additionally, Samantha was named the California state winner of the 2005 MTNA (Music Teachers National Association) Senior Piano Competition, has performed in the Weill Hall at Carnegie Hall as winner of the Russian-American International Festival and will be broadcast as a soloist on WQXR radio's Young Artist's Showcase this June.

I am proud to stand here today to recognize Samantha for her accomplishments as an exceptional artist and student. I urge Samantha to continue to take an interest in the performing arts, as artistic and creative innovation is a crucial component of America's cultural fabric, and I wish her the best of luck as she continues her education at Harvard this fall.

IN HONOR OF JOHN C. HALL, SEPTEMBER 15, 1953–FEBRUARY 25, 2006

### HON. XAVIER BECERRA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, May 25, 2006*

Mr. BECERRA. Mr. Speaker, I rise today with profound sadness to pay tribute to Mr. John Hall, a dear friend, a devoted community leader and a passionate champion for America's working men and women, who passed away suddenly of heart failure on the evening of Saturday, February 25, 2006. He was the loving son of Joann Hall and the devoted father of his only child, Katrina Susan Hall.

Born September 15, 1953, in Los Angeles, John was a lifelong Angeleno devoted to his family, his trade and his community. He began his career as an apprentice plumber in 1980 with the United Association of Plumbers Local 78 in Los Angeles. John quickly mastered the skills of a journeyman plumber and became an active member of UA Plumbers Local 78. While working at his trade during the day, he donated his time as a plumbing instructor at night at the union's training center. John eventually worked his way up to Business Manager of Local 78 in 1995, a position from which he advocated for the preservation of pensions and health coverage for working people. John was also known for his civic participation, serving honorably on the Contractors State Licensing Board following his appointment by Governor Gray Davis.

It was fitting with John's generous character and sense of responsibility that he volunteered

much of his personal time to the charitable organization Big Brothers of Greater Los Angeles. He spent many years as a big brother to Sean Wall, imparting his wisdom and leadership skills onto the next generation.

John was highly admired by the labor community and policy-makers alike for his efforts to improve the lives of working families, and for his warm personality and generous spirit. John was a selfless leader, who dedicated himself completely to his craft, his union and all those who looked to him for support and guidance.

Mr. Speaker, it is with heartfelt sorrow, yet great admiration and appreciation, that I ask my colleagues to join me today in saluting John C. Hall. May his generosity and dedication to improving conditions for working families be remembered and carried on by those of us who were fortunate enough to call him "friend."

### RECOGNIZING KYLE THOMAS KING FOR ACHIEVING THE RANK OF EAGLE SCOUT

### HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

*Thursday, May 25, 2006*

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Kyle Thomas King, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 351, and in earning the most prestigious award of Eagle Scout.

Kyle has been very active with his troop, participating in many scout activities. Over the many years Kyle has been involved with Scouting, he has not only earned numerous merit badges, but also the respect of his family, peers, and community.

Mr. Speaker, I proudly ask you to join me in commending Kyle Thomas King for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

### CONGRESS REAPS WHAT IT SOWS

### HON. C. L. "BUTCH" OTTER

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, May 25, 2006*

Mr. OTTER. Mr. Speaker, there has been an awful lot of talk the last few days about the FBI's Saturday night raid on the office of a Democrat U.S. Congressman. It's tough for me to get too excited about the howls of protest from members of Congress. I understand their concerns about protecting the independence of the legislative branch and possible abuse of executive powers. But it makes me wonder: Where were these voices of outrage and righteous indignation when we learned the executive branch was monitoring the telephone conversations of ordinary Americans? Where were they when the executive branch sought, and the USA PATRIOT ACT granted, more power to search the homes and businesses of ordinary Americans without notification? At least we know there was a legitimate warrant issued by a judge for the search of

the Congressman's office. Are my honorable colleagues suggesting that members of Congress or the institution itself should be treated differently in the eyes of the law than those who hold the most important position in America—that of "citizen"? I hope not.

### HONORING JUNE KENYON ON HER RETIREMENT, HEAD OF CASEWORK, CONROE DISTRICT OFFICE

### HON. KEVIN BRADY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, May 25, 2006*

Mr. BRADY of Texas. Mr. Speaker, I rise today to honor June Kenyon upon her retirement from my district office staff.

Beginning in 1997 when I first took office, June Kenyon brought to the field office in Humble, Texas her wealth of knowledge and experience gleaned from working for my predecessor, the Honorable Jack Fields. Not only did June sign on as Office Manager but took on the role of Head of Casework to help constituents. I was blessed to have June's expertise and long record of commitment to constituents in helping me confront the challenges of being a newly elected Congressman.

For the next 9 years, June excelled at her roles and increased her knowledge of the inner workings of Federal agencies to the point that some even invited her to brief their staffs on the intricacies of casework with Congressional offices.

June's command of the system and successful resolution of thousands of cases are a tribute to her professionalism and relentlessness in serving the residents of the 8th Congressional District.

Extremely hard-working, painstakingly fair, exceedingly knowledgeable—these are qualities June has not only honed but put at the disposal of constituents as she advocates for them and resolves difficult issues. But it was in the challenges faced by our constituents in the aftermath of Hurricane Rita this past fall that June's abilities shown brightly as she led the efforts to resolve quickly and systematically over 1,000 claims for expedited assistance from FEMA. Working long hours, interfacing with local officials and aid agencies, June contributed significantly to the ability of Southeast Texans to survive the aftermath of this devastating storm and begin the recovery process.

While June has always been a diligent staffer, the last 18 months have created personal challenges for her, including a long commute to Conroe after redistricting led to closing the Humble office. The redistricting also meant serving a different and larger geographic area. June did not miss a beat in adapting to the new conditions, including participating in the Mobile Office taking caseworkers to constituents in the small towns of East Texas.

In the years I have worked with June, I have come to know a committed Republican activist and a woman of broad and varied interests which I hope she will pursue in the time afforded by retirement. From her native New York, June brought with her to the Houston area, a distinctive Long Island accent and a deep-seated love of music. Although she has yet to sing for our staff, June has shared with us reminiscences as varied as singing classical music at Carnegie Hall and the blues at